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Supreme Court, U.S.
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JOSEPH F. SPANGL, JR.
CLERK

No. 85-6956

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

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LEVIS LEON ALDRICH,

Petitioner,

-v-

LOUIE L. WAINWRIGHT, Secretary,
Florida Department of Corrections,

Respondent.

=====

SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioner, LEVIS LEON ALDRICH, pursuant to the authority of Rule 22.6, Rules of the Supreme Court of the United States, files his supplemental brief to call attention to an intervening case not available at the time of filing his petition for writ of certiorari in the above-styled cause.

DISCUSSION

On June 9, 1986, the Court granted the petition for writ of certiorari in Hitchcock v. Wainwright (No. 85-6756). ___U.S.____, 106 S.Ct. 2888. One of the two questions presented in Hitchcock is concerned with the same constitutional issue that underlies Question 3 in Mr. Aldrich's petition. That issue is the interpretation and application of the Florida capital sentencing statute by the Florida Supreme Court prior to the Court's opinion in Lockett v. Ohio, 438 U.S. 586 (1978), to preclude the consideration of nonstatutory mitigating circumstances in the determination of the sentence in a capital trial. Mr. Hitchcock has argued that due to this interpretation and application of the statute, the Florida statute was unconstitutional prior to Lockett. See Brief for Petitioner, Hitchcock v. Wainwright (No. 85-6756), at 14-20. Mr. Aldrich was sentenced during the pre-Lockett period, on January 8, 1975. Further, Mr. Hitchcock has

argued that the pre-Lockett interpretation of the Florida statute had actual and specific consequences in his case that precluded the consideration of nonstatutory mitigating circumstances. Id. at 20-35. Mr. Aldrich has presented the same kind of argument in his petition, by showing that his decision not to argue residual doubt about guilt as a basis for a life sentence -- as well as the judge's failure to consider this factor in sentencing him -- were due to his, his lawyers, the prosecutor's, and the judge's common understanding that nonstatutory factors such as this could not be considered in sentencing.

CONCLUSION

For these reasons, the Lockett question presented by Mr. Aldrich is manifestly worthy of review by the Court. Certiorari should accordingly be granted, not only to consider the important question of prejudice associated with counsel's ineffective assistance in the guilt-innocence phase of Mr. Aldrich's trial, but also to consider the Lockett error that is already under review in Hitchcock v. Wainwright.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Joy B. Shearer, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by mail this 12th day of September 1986.

AMC
Of Counsel